

**INTERLOCAL AGREEMENT BETWEEN THE WASHINGTON DEPARTMENT OF
FISH AND WILDLIFE (WDFW) AND KITTITAS COUNTY FOR THE CONTROL OF
PUBLIC ACCESS TO ROBINSON CANYON ROAD DURING WINTER ELK FEEDING
PROGRAM**

This Agreement is made and entered into this 4th day of November 2008, by and between the WDFW, a department of the Washington State government, and Kittitas County, a political subdivision of the State of Washington (the "County").

WHEREAS, The County and WDFW recognize the need for annual control of Robinson Canyon Road from the end of pavement west to the elk fence gate (a distance of approximately 3,500 feet as of June 30, 2008), for the purpose of controlling public access to winter-feeding areas and movement of elk into the Kittitas Valley, and

WHEREAS, This control is necessary to prevent disturbance of elk and resultant movement around and through the control fence and into the Kittitas Valley, and

WHEREAS, this Agreement for cooperative services is authorized by the provisions of Chapter 39.34 RCW, the Interlocal Cooperation Act.

NOW, THEREFORE, it is hereby agreed as follows:

1. **Purpose.** The purpose of this Agreement is to set forth the understanding that the County of Kittitas will grant limited control to the WDFW over access via Robinson Canyon Road for the protection of elk during WDFW's elk feeding program, the limitations of that control are described herein.

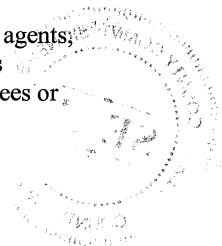
2. **Responsibilities.** The parties' respective responsibilities for this Program shall be as follows:

- a. The County agrees to grant WDFW authority to control public access annually during winter elk feeding periods for a period of 15 years, commencing July 1, 2008, and terminating June 30, 2023. The County shall retain control of access during all other periods.
- b. The County reserves the right to cancel the WDFW right to control access as granted in paragraph 1 above in the event WDFW unreasonably controls access to the area or controls access for purposes other than for winter feeding of elk. In the event of such noncompliance, the County shall first give written notice to WDFW of such condition or use contrary to this agreement. Upon receipt of such notice, WDFW shall correct such deficiency immediately, but in any event shall correct such deficiency within 14 days. If such deficiency is not corrected as prescribed, the County may cancel and terminate WDFW right to control access. Such notice shall be in writing and effective immediately upon receipt of such notice by WDFW.
- c. This document contains the entire agreement between the parties, and no statement, promise, inducement, or agreement made by WDFW or its agents or employees that is not contained in this written agreement shall be valid or binding.
- d. No alteration or modification of any of the terms or conditions of this agreement will be effective if not in writing and signed by WDFW and the Kittitas County Board of County Commissioners.
- e. This agreement will automatically renew for like periods of 15 years providing neither party notifies the other in writing 180 days prior to the expiration date of this agreement of their intent not to renew the agreement. This agreement can, however, be terminated by mutual consent of both parties prior to the expiration date of the agreement.
The County Commission may initiate a review of the agreement at 5 year intervals.

3. **Indemnification.**

a. The County shall indemnify, defend and hold harmless the WDFW, its agents, employees and officers from any and all liability arising out of the performance of this Agreement by the County, whether by act or omission of the County's agents, employees or officers.

OPPOSED



employees and officers from any and all liability arising out of the performance of this Agreement by the WDFW, whether by act or omission of the WDFW's agents, employees or officers.

4. **Future Support.** Neither party to this Agreement makes any commitment to future support and assumes no obligation for future support of any activity contracted for herein, except as may be expressly set forth in this Agreement.

5. **Compliance with Laws.** Each party hereto, in its performance of this Agreement, agrees to comply with all applicable local, State, and Federal laws and ordinances.

6. **Relationship of the Parties.** No agent, employee or representative of the County shall be deemed to be an agent, employee or representative of the WDFW for any purpose, and the employees of the County are not entitled to any of the benefits the WDFW provides to WDFW employees. No agent, employee or representative of the WDFW shall be deemed to be an agent, employee or representative of the County for any purpose, and the employees of the WDFW are not entitled to any of the benefits the County provides to County employees.

7. **Agreement Not For Benefit of Third Parties.** This Agreement is entered into solely for the benefit of the parties hereto and vests no rights in, or is it enforceable by, any third parties.

8. **Disputes.** If a dispute arises between the parties concerning this Agreement, the dispute shall be referred to the WDFW Regional Manager and the Chair of the Board of County Commissioners for resolution. If not resolved by the WDFW Regional Manager and Chair within thirty (30) days of referral, either party may pursue court action under paragraph 9 below.

9. **Jurisdiction.** Any legal dispute between the parties to this Agreement shall be governed by the laws of the State of Washington, and any action to enforce this Agreement shall be brought in Kittitas County, Washington.

10. **Modification.** The provisions of this Agreement may be modified or amended only by written mutual consent of the parties.


11. **Waiver.** A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

12. **Severability.** If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

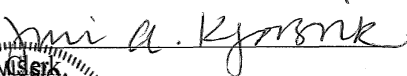
13. **Filing.** This Agreement shall be filed with the Kittitas County Auditor, as required by RCW 39.34.040.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

WDFW


Jennifer Quan
Lands Division Manager

Attest:



Ami A. Kjosvick




KITTITAS COUNTY
OPPOSED


Mark D. McClain
Chair, BOCC

11/4/08


Commissioner


Commissioner

Approved as to form:


Prosecuting Attorney